



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Adopt resolution approving consulting services agreement with Borismetrics, Inc. to provide professional services (\$40,000) to the Electric Utility Department (EUD)

MEETING DATE: May 4, 2005

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to approve the Consulting Services Agreement with Borismetrics, Inc. to provide Professional Services to the Electric Utility Department in the amount of \$40,000.

BACKGROUND INFORMATION: The Electric Utility Department faces a number of issues related to the fast paced and volatile energy industry, which require professional assistance in order to efficiently manage and position the utility.

The Electric Utility Department proposes to hire Boris Prokop through a consulting agreement with his company, BORISMETRICS, Inc. to perform the management and higher analysis duties of the former Business Planning Manager and the former Rates and Resources Manager. BORISMETRICS, Inc. is uniquely qualified to provide the needed expertise by virtue of its direct experience and familiarity with the issues facing the City of Lodi.

The services that Mr. Prokop has provided in previous contracts have proven to be beneficial to the Electric Utility Department. This is a new contract not an extension since previous contract expired in December 2004. As part of his activities, he has implemented new large customer contracts, load analysis tools, and work on changes to NCPA pooling agreements. In order to preserve the continuity of his knowledge in the areas of rates and power supply for the City of Lodi and given the rapid change in the electric utility industry, there is a need to maintain the services by authorizing this contract with a budget of \$40,000. This funding would carry his work through the end of June 2006. At the discretion of the Utility Director, this full amount may not be utilized.

FISCAL IMPACT: Hiring BORISMETRICS, Inc. and not filling the Manager of Rates and Resources position at this time will provide a cost savings of approximately \$100,000 annually.

FUNDING: 160603.7323


James R. Krueger, Finance Director


Alan N. Vallow
Electric Utility Director

Prepared By: Mel Grandi, Manager, Electric Services

APPROVED: 
Blair King, City Manager

CONSULTING SERVICES AGREEMENT

BORISMETRICS

Billing Address
P.O. Box 15040
Sacramento, CA 95851
(425) 922-2853

Work Order # _____

This Consulting Services Agreement is made between BORISMETRICS, (hereinafter "BORISMETRICS") and City of Lodi, Electric Utility, whose place of business is located at 1331 S. Ham Lane, Lodi, CA 95242 (hereinafter "CLIENT") for a Project generally described as Rates, Cost of Service and Power Supply Assistance.

I. SCOPE AND QUALITY OF CONSULTING SERVICES

BORISMETRICS will provide assistance to the Client in the area of rates, cost of service and power supply. This work may include but not limited to the following:

- Average embedded cost of service
- Rate design and evaluation
- Financial and Revenue Requirement Analysis
- Power cost adjustment rate
- NCPA resource, pool and bill analysis
- Resource evaluation
- Load/Revenue Forecasting
- RTO, CAISO, TANC and transmission issue review

This work will be at the direction of the Electric Utility with specific tasks assigned by Utility Staff that define consultant hours and required assistance in written form. BORISMETRICS shall render its services in accordance with generally accepted professional practices. BORISMETRICS shall, to the best of its knowledge and belief, comply with applicable laws, ordinances, codes, rules, regulations, permits and other published requirements in effect on the date this Agreement is signed.

II. COMPENSATION AND REIMBURSEMENT OF COSTS

Services provided and costs incurred (with the exception of travel, food and lodging expenses) by BORISMETRICS under this Agreement will be compensated according to the following:

Principal	\$100/hour
Senior Analyst	\$95/hour
Research Analyst	\$80/hour
Secretarial	\$55/hour

BORISMETRICS will submit monthly invoices to CLIENT for work completed and reasonable expenses incurred, to the date of the invoice. All invoices will be itemized to reflect the employees performing the requested tasks, the billing rate for each employee and the hours worked. The total compensated amount for the contract is **\$40,000.00**.

All invoices sent by BORISMETRICS to CLIENT shall be paid within thirty (30) days of receipt. All billings that remain unpaid after thirty (30) days shall bear interest until paid at the rate of twelve percent (12%) per annum. If CLIENT fails to pay any invoice within thirty (30) days and such failure continues ten (10) days after BORISMETRICS gives CLIENT notice of such failure, BORISMETRICS shall have the right to terminate this Agreement immediately without liability to CLIENT. The right to terminate under the terms of

this section shall be in addition to all other legal, equitable, or contractual remedies available to BORISMETRICS.

III. TERMS & CONDITIONS OF CONSULTING SERVICES AGREEMENT

1. **Timing of Work.** BORISMETRICS shall commence work as specified by the Electric Utility Director.
2. **Access to Facilities and Property.** The CLIENT will make its facilities accessible to BORISMETRICS as required for BORISMETRICS's performance of its services and will provide labor and safety equipment as required by BORISMETRICS for such access. CLIENT will be responsible for all acts of CLIENT's agents or personnel.
3. **Relationship of Parties, No Third-Party Beneficiaries.** BORISMETRICS is an independent contractor under this Agreement. This Agreement gives no rights or benefits to anyone not named as a party to this Agreement, and there are no third party beneficiaries to this Agreement.
4. **Subcontracts.** BORISMETRICS may use the services of independent contractors to perform a portion of its obligations under this Agreement with prior approval by CLIENT. Subcontractors will be billed to CLIENT at their cost to BORISMETRICS.
5. **Mutual Indemnification.** BORISMETRICS agrees to indemnify and hold harmless CLIENT and its elected and appointed council, boards commissions, officers and employees from and against any and all loss, cost, damage, or expense of any kind and nature (including, without limitation, court costs, expenses, and reasonable attorneys' fees) arising out of injury to persons or damage to property (including, without limitation, property of CLIENT, BORISMETRICS, and their respective employees, agents, licensees, and representatives) in any manner caused by the negligent acts or omissions of BORISMETRICS or others with whom BORISMETRICS contracts ("Agents") in the performance of its work pursuant to or in connection with this Agreement to the extent of BORISMETRICS's or "Agents" proportionate negligence, if any.

CLIENT agrees to indemnify and hold harmless BORISMETRICS and its employees from and against any and all loss, cost, damage, or expense of any kind and nature (including without limitation, court costs, expenses and reasonable attorneys' fees) arising out of injury to person(s) or damage to property (including, without limitation, property of CLIENT, BORISMETRICS, and their respective employees, agents, licensees and representatives) in any manner caused by the negligent acts or omissions of CLIENT or other(s) with whom CLIENT contracts ("CLIENT's agents") to perform work pursuant to or in connection with this Agreement, to the extent of CLIENT's or CLIENT's agents proportionate negligence, if any.
6. **Limitation of Liability.** The parties liability hereunder shall be limited as follows: (a) for insured liabilities arising out of either parties negligence, to the amount of insurance then available to fund any settlement, award, or verdict; (b) for uninsured liabilities, to 50 percent (50%) of the fee earned by BORISMETRICS under this Agreement for the task in question. In no event shall either parties liabilities exceed the aforementioned limits of liability.
Each party's liability for damages provided under this Agreement shall be limited to liability for direct damages and shall in no event include liability for the other party's or their respective agents or employees remote, punitive, consequential or indirect damages for lost profits, loss of use, lost opportunity, financing, interest expense, business interruption or productivity or production loss, regardless of the breach of contract, breach of warranty, tort (including negligence), strict liability, or otherwise.
7. **Delays.** BORISMETRICS will not be liable to CLIENT for delays in performance under this Agreement or for the direct or indirect cost resulting from delays that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions, natural catastrophes or other events or occurrences beyond control of BORISMETRICS. In the event CLIENT suspends or interrupts the services of BORISMETRICS for the convenience of CLIENT, an equitable adjustment in the project's schedule and in compensation to BORISMETRICS will be made.

8. **Data, Documents and Records.** BORISMETRICS shall be entitled to rely upon the accuracy and completeness of all data furnished by CLIENT to BORISMETRICS that is used by BORISMETRICS in the providing of services under this Agreement. BORISMETRICS has the right to retain and use all data furnished to it and all plans, designs, specifications and other work product created by BORISMETRICS in providing services hereunder.

9. **Ownership and Use of Documents and Electronic Media Deliverables.** All completed reports and other data or documents provided or prepared by BORISMETRICS in accordance with this Agreement are the property of CLIENT, and may be used by CLIENT. Ownership shall transfer to CLIENT only if BORISMETRICS has been paid in full for services under the terms of this Agreement. CLIENT shall release, defend, indemnify and hold harmless BORISMETRICS from all claims, costs, expenses, damage, or liability arising out of or resulting from the use or modification of any reports, data, documents, drawings, specifications, or other work product prepared by BORISMETRICS except use by CLIENT on those portions of the project for which such items were prepared.

10. **Resolution of Disputes, Attorneys' Fees.** The law of the State of California shall govern the interpretation of and the resolution of disputes under this Agreement. If any claim, at law or otherwise, is made by either party to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

11. **Termination of Agreement.** Either BORISMETRICS or CLIENT may terminate this Agreement upon thirty (30) days written notice to the other sent to the addresses listed herein. In the event CLIENT terminates this agreement, CLIENT specifically agrees to pay BORISMETRICS for all services rendered through the termination date.

12. **Integration, Modification and Severability.** This Agreement, including all Addenda, shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This is the entire agreement between the parties, there are no other agreements or representations not set forth herein, and this Agreement incorporates and supersedes all prior negotiations, agreements, and representations. This Agreement may not be modified except in writing signed by an authorized representative of each party. If any provision of this Agreement is deemed by law to be void, invalid or inoperative for any reason, or any phrase or clause within such provision is deemed by law to be void, invalid or inoperative, that phrase, clause or provision shall be deemed modified to the extent necessary to make it valid and operative, or, if it cannot be so modified, then such phrase, clause or provision shall be deemed severed from this Agreement with the remaining phrases, clauses and provisions continuing in full force and effect as if the Agreement had been signed with the void, invalid or inoperative portions so modified or eliminated. In addition, a phrase, clause or provision shall be substituted which is consistent with the intent of this Agreement and the severed phrase, clause or provision.

13. **Notices.** All notices, requests, demands, and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender and delivered by facsimile (with a hard copy mailed), or, when sent by a courier or express service guaranteeing overnight delivery to the receiving party.

Notices to BORISMETRICS shall be delivered to:

BORISMETRICS, INC.
P.O. Box 15040
Sacramento, CA 95851
ATTN: Boris Prokop
Facsimile: 650-429-2063

Notices to CLIENT shall be delivered to:

CITY OF LODI
P.O. Box 3006
Lodi, California 95241-1910
ATTN: Alan N. Vallow
Facsimile: 209-339-0851

14. **Headings, Assignment and Waiver.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Neither party to this Agreement shall assign its duties and obligations hereunder without the prior written consent of the other party. A waiver by any party of any

provision or a breach of this Agreement must be provided in writing and shall not be construed as a waiver of any other provision or any succeeding breach of the same or any other provisions herein.

15. **Execution of Agreement.** The parties agree that the language in this Agreement pertaining to Indemnification, Limitations of Liability and Insurance are clear and unambiguous and were mutually negotiated by the parties.

BORISMETRICS, INC.

CITY OF LODI

By: Boris Prokop _____

By _____

Title: PRINCIPAL _____

Title: CITY MANAGER _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By:

D. Stephen Schwabauer, City Attorney

ATTEST:

By: _____
Susan Blackston, City Clerk

CONSULTING SERVICES AGREEMENT

BORISMETRICS

Billing Address
P.O. Box 15040
Sacramento, CA 95851
(425) 922-2853

Work Order # _____

This Consulting Services Agreement is made between BORISMETRICS, (hereinafter "BORISMETRICS") and City of Lodi, a California municipal corporation, whose place of business is located at 1331 S. Ham Lane, Lodi, CA 95242 (hereinafter "CLIENT") for a Project generally described as Rates, Cost of Service and Power Supply Assistance to Client's Electric Utility Department.

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I. SCOPE AND QUALITY OF CONSULTING SERVICES

BORISMETRICS will provide assistance to the Client in the area of rates, cost of service and power supply as may from time to time be directed by Client. This work may include but is not limited to the following:

- Average embedded cost of service
- Rate design and evaluation
- Financial and Revenue Requirement Analysis
- Power cost adjustment rate
- NCPA resource, pool and bill analysis
- Resource evaluation
- Load/Revenue Forecasting
- RTO, CAISO, TANC and transmission issue review

Work will be performed at the request of the Client, with specific tasks assigned in writing by Electric Utility Staff defining the assistance required. BORISMETRICS will provide Client with an estimate of the cost to perform the requested work and the estimated time for completion. BORISMETRICS shall render its services in accordance with generally accepted professional practices. BORISMETRICS shall, to the best of its knowledge and belief, comply with applicable laws, ordinances, codes, rules, regulations, permits and other published requirements in effect on the date this Agreement is signed, as may be applicable to the scope of the services to be performed.

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II. COMPENSATION AND REIMBURSEMENT OF COSTS

Services provided and costs incurred (with the exception of travel, food and lodging expenses) by BORISMETRICS under this Agreement will be compensated according to the following schedule:

Principal	\$100/hour
Senior Analyst	\$95/hour
Research Analyst	\$80/hour
Secretarial	\$55/hour

BORISMETRICS will submit monthly invoices to CLIENT for work completed and reasonable expenses incurred, to the date of the invoice. All invoices will be itemized to reflect the employees performing the requested tasks, the billing rate for each employee and the hours worked. The total to be paid under this Agreement, is not to exceed **\$40,000.00**.

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All invoices sent by BORISMETRICS to CLIENT shall be paid within thirty (30) days of receipt. All billings that remain unpaid after thirty (30) days shall bear interest until paid at the rate of twelve percent (12%) per annum. If CLIENT fails to pay any invoice within thirty (30) days and such failure continues ten (10) days after BORISMETRICS gives CLIENT notice of such failure, BORISMETRICS shall have the right to terminate this Agreement immediately without liability to CLIENT. The right to terminate under the terms of this section shall be in addition to all other legal, equitable, or contractual remedies available to BORISMETRICS.

III. TERMS & CONDITIONS OF CONSULTING SERVICES AGREEMENT

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2. **Access to Facilities and Property.** The CLIENT will make its facilities accessible to BORISMETRICS as required for BORISMETRICS's performance of its services and will provide labor and safety equipment as required by BORISMETRICS for such access. CLIENT will be responsible for all acts of CLIENT's agents or personnel.

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5. **Mutual Indemnification.** BORISMETRICS agrees to indemnify and hold harmless CLIENT and its elected and appointed council, boards commissions, officers and employees from and against any and all loss, cost, damage, or expense of any kind and nature (including, without limitation, court costs, expenses, and reasonable attorneys' fees) arising out of injury to persons or damage to property (including, without limitation, property of CLIENT, BORISMETRICS, and their respective employees, agents, licensees, and representatives) in any manner caused by the negligent acts or omissions of BORISMETRICS or others with whom BORISMETRICS contracts ("Agents") in the performance of its work pursuant to or in connection with this Agreement to the extent of BORISMETRICS's or "Agents" proportionate negligence, if any.

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6. **Limitation of Liability.** The parties agree to limit each others' liability as follows: (a) for insurable events arising out of the negligence of either party, to the amount of insurance then available to fund any settlement, award, or verdict; (b) for uninsured events, the amount shall not exceed the total compensation earned by BORISMETRICS under this Agreement. In no event shall the liability of either party exceed the aforementioned limits. Each party's liability for damages provided under this Agreement shall be limited to liability for direct damages and shall in no event include liability for the other party's or their respective agents or employees remote, punitive, consequential or indirect damages for lost profits, loss of use, lost opportunity, financing, interest expense, business interruption or productivity or production loss, regardless of the breach of contract, breach of warranty, tort (including negligence), strict liability, or otherwise.

7. **Delays.** BORISMETRICS will not be liable to CLIENT for delays in performance under this Agreement for the direct or indirect cost resulting from delays that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions, natural catastrophes or other events or

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8. Data, Documents and Records. BORISMETRICS shall be entitled to rely upon the accuracy and completeness of all data furnished by CLIENT to BORISMETRICS that is used by BORISMETRICS in the providing of services under this Agreement. BORISMETRICS has the right to retain and use all data furnished to it and all plans, designs, specifications and other work product created by BORISMETRICS in providing services hereunder.

9. Ownership and Use of Documents and Electronic Media Deliverables. All completed reports and other data or documents provided or prepared by BORISMETRICS in accordance with this Agreement are the property of CLIENT, and may be used by CLIENT. Ownership shall transfer to CLIENT only if BORISMETRICS has been paid in full for services under the terms of this Agreement. CLIENT shall release, defend, indemnify and hold harmless BORISMETRICS from all claims, costs, expenses, damage, or liability arising out of or resulting from the use or modification of any reports, data, documents, drawings, specifications, or other work product prepared by BORISMETRICS except use by CLIENT on those portions of the project for which such items were prepared.

10. Insurance. During the performance of services under this Agreement, BORISMETRICS shall maintain the following insurance:

- (a) General Liability insurance with bodily injury and property damage of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate.
- (b) Automobile Liability insurance with bodily injury and property damage limits of not less than \$1,000,000 for each accident.
- (c) Worker's Compensation insurance in accordance with statutory requirements and employer's liability insurance with limits of not less than \$500,000 per each occurrence.
- (d) Professional Liability insurance with limits of not less than \$1,000,000 annual aggregate.

10.1 Endorsements. Client shall be named as an additional insured on policies (a) and (b) listed above to the extent claims arise from the services which are performed pursuant to this Agreement. The insurance policies shall be endorsed to include the following language: "Insurance as is afforded by the endorsement for additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

10.2 Proof of Insurance. BORISMETRICS shall furnish a certificate of insurance evidencing the above concurrently with the execution of this Agreement and including a provision that such insurance shall not be cancelled without at least thirty (30) days written notice to CLIENT.

11. Resolution of Disputes, Attorneys' Fees. The law of the State of California shall govern the interpretation of and the resolution of disputes under this Agreement. Venue for any action shall be with the San Joaquin County Superior Court. If any claim, at law or otherwise, is made by either party to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

12. Termination of Agreement. Either BORISMETRICS or CLIENT may terminate this Agreement upon thirty (30) days written notice to the other sent to the addresses listed herein. In the event CLIENT terminates this Agreement, CLIENT specifically agrees to pay BORISMETRICS for all services rendered through the termination date.

13. Integration, Modification and Severability. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This is the entire agreement between the parties, there are no other agreements or representations not set forth herein, and this Agreement incorporates and supersedes all prior negotiations, agreements, and representations. This Agreement may not be modified except in writing signed by an authorized representative of each party.

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If any provision of this Agreement is deemed by law to be void, invalid or inoperative for any reason, or any phrase or clause within such provision is deemed by law to be void, invalid or inoperative, that phrase, clause or provision shall be deemed modified to the extent necessary to make it valid and operative, or, if it cannot be so modified, then such phrase, clause or provision shall be deemed severed from this Agreement with the remaining phrases, clauses and provisions continuing in full force and effect as if the Agreement had been signed with the void, invalid or inoperative portions so modified or eliminated. In addition, a phrase, clause or provision shall be substituted which is consistent with the intent of this Agreement and the severed phrase, clause or provision.

14. **Notices.** All notices, requests, demands, and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender and delivered by facsimile (with a hard copy mailed), or, when sent by a courier or express service guaranteeing overnight delivery to the receiving party.

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Notices to BORISMETRICS shall be delivered to:

Notices to CLIENT shall be delivered to:

BORISMETRICS, INC.

CITY OF LODI

Electric Utility Department

P.O. Box 15040
Sacramento, CA 95851
ATTN: Boris Prokop
Facsimile: 650-429-2063

P.O. Box 3006
Lodi, CA 95241-1910
ATTN: Alan N. Vallow, Director
Facsimile: 209-339-0851

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14. **Headings, Assignment and Waiver.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. Neither party to this Agreement shall assign its duties and obligations hereunder without the prior written consent of the other party. A waiver by any party of any provision or a breach of this Agreement must be provided in writing and shall not be construed as a waiver of any other provision or any succeeding breach of the same or any other provisions herein.

15. **Execution of Agreement.** The parties agree that the language in this Agreement pertaining to Indemnification, Limitations of Liability and Insurance are clear and unambiguous and were mutually negotiated by the parties.

BORISMETRICS, INC.

CITY OF LODI, a California municipal corporation

By: Boris Prokop

By: Blair King

Title: Principal

Title: CITY MANAGER

Date:

Date:

APPROVED AS TO FORM:

D. Stephen Schwabauer
City Attorney, City of Lodi

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By:

Janice D. Magdich

Deputy City Attorney

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ATTEST:

By:

Susan Blackston, City Clerk

Dated:

RESOLUTION NO. 2005-89

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
CONSULTING SERVICES AGREEMENT WITH BORISMETRICS
TO PROVIDE PROFESSIONAL SERVICES IN THE AREAS
OF POWER SUPPLY AND RATES TO THE ELECTRIC
UTILITY DEPARTMENT

WHEREAS, the Electric Utility Department faces a number of issues related to the fast-paced and volatile energy industry, which require professional assistance in order to efficiently manage and position the utility; and

WHEREAS, Electric Utility staff recommends hiring Boris Prokop through a consulting agreement with his company, Borismetrics, to perform the management and higher analysis duties of the former Business Planning Manager and the former Rates and Resources Manager; and

WHEREAS, Borismetrics is uniquely qualified to provide the needed expertise by virtue of its direct experience and familiarity with the issues facing the City of Lodi; and

WHEREAS, the services that Borismetrics has provided under previous contracts have proved to be very beneficial to the Electric Utility Department, with the implementation of new large customer contracts, load analysis tools, and work on changes to NCPA pooling agreements; and

WHEREAS, in order to preserve the continuity of his knowledge in the areas of rates and power supply for the City of Lodi and given the rapid change in the electric utility industry, there is a need to maintain the services by authorizing this contract with a budget not to exceed \$40,000, which may or may not be utilized at the discretion of the Electric Utility Director, for work through the end of June 2006.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Consulting Services Agreement with Borismetrics to provide professional services in the areas of management and higher analysis duties of the former Business Planning Manager and the former Rates and Resources Manager for the Electric Utility Department at a cost not to exceed \$40,000, to be utilized at the discretion of the Electric Utility Director; and

BE IT FURTHER RESOLVED that the Professional Services Agreement and funding will be for work provided through the end of June 2006.

Dated: May 4, 2005

I hereby certify that Resolution No. 2005-89 was passed and adopted by the Lodi City Council in a regular meeting held May 4, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and
Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk